

106TH CONGRESS
2D SESSION

S. 2405

To prohibit predatory lending practices with respect to home loans, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2000

Mr. SCHUMER introduced the following bill; which was read twice and referred
to the Committee on Banking, Housing, and Urban Affairs

A BILL

To prohibit predatory lending practices with respect to home
loans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Predatory Lending De-
5 terrence Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the terms “affiliate” and “subsidiary” have
9 the same meanings as in section 2 of the Bank
10 Holding Company Act of 1956 (12 U.S.C. 1841);

1 (2) the terms “appropriate Federal financial su-
 2 pervisory agency” and “regulated financial institu-
 3 tion” have the same meanings as in section 803 of
 4 the Community Reinvestment Act of 1977 (12
 5 U.S.C. 2902); and

6 (3) the terms “consumer”, “creditor”, and
 7 “open end credit plan” have the same meanings as
 8 in section 103 of the Truth in Lending Act (15
 9 U.S.C. 1602).

10 **SEC. 3. THRESHOLDS.**

11 Section 103(aa)(1) of the Truth in Lending Act (15
 12 U.S.C. 1602(aa)(1)) is amended—

13 (1) in subparagraph (A), by striking “10 per-
 14 centage” and inserting “8 percentage”; and

15 (2) in subparagraph (B), by striking clauses (i)
 16 and (ii), and inserting the following:

17 “(i) 4 percent of the total loan
 18 amount, if the total loan amount is not
 19 less than \$20,000; or

20 “(ii) the lesser of 5 percent of the
 21 total loan amount or \$800, if the total loan
 22 amount is less than \$20,000, excluding
 23 from the amount of points and fees—

24 “(I) not more than 2 bona fide
 25 loan discount points payable by the

1 consumer in connection with the loan
2 transaction, if the interest rate from
3 which the interest rate on the loan
4 will be discounted does not exceed by
5 more than 1 percentage point the re-
6 quired net yield for a 90-day standard
7 mandatory delivery commitment for a
8 reasonably comparable loan from ei-
9 ther the Federal National Mortgage
10 Association or the Federal Home
11 Loan Mortgage Corporation, which-
12 ever is greater; and

13 “(II) not more than 1 bona fide
14 loan discount point payable by the
15 consumer in connection with the loan
16 transaction, if the interest rate from
17 which the interest rate on the loan
18 will be discounted does not exceed by
19 more than 2 percentage points the re-
20 quired net yield for a 90-day standard
21 mandatory delivery commitment for a
22 reasonably comparable loan from ei-
23 ther the Federal National Mortgage
24 Association or the Federal Home

1 Loan Mortgage Corporation, which-
2 ever is greater.”.

3 **SEC. 4. PROHIBITIONS AND LIMITATIONS REGARDING**
4 **HIGH COST HOME LOANS.**

5 (a) IN GENERAL.—Section 129 of the Truth in Lend-
6 ing Act (15 U.S.C. 1639) is amended—

7 (1) in the section heading, by inserting “**HIGH**
8 **COST**” after “**CERTAIN**”;

9 (2) by striking subsections (c) through (k);

10 (3) by redesignating subsection (l) as subsection
11 (n); and

12 (4) by inserting after subsection (b) the fol-
13 lowing:

14 “(c) PROHIBITION ON BALLOON PAYMENTS.—

15 “(1) IN GENERAL.—A mortgage referred to in
16 section 103(aa) may not contain terms under which
17 any scheduled payment is more than twice the
18 amount of the average of all other regular periodic
19 payments.

20 “(2) CONSTRUCTION.—Paragraph (1) does not
21 prohibit a payment schedule adjusted for the sea-
22 sonal or irregular income of the consumer.

23 “(d) PROHIBITION ON NEGATIVE AMORTIZATION.—
24 A mortgage referred to in section 103(aa) may not contain
25 terms under which the repayment schedule of regular peri-

1 odic payments does not cover the full amount of interest
 2 due, causing the principal balance to increase.

3 “(e) PROHIBITION ON PREPAID PAYMENTS.—A
 4 mortgage referred to in section 103(aa) may not contain
 5 terms under which more than 2 periodic payments re-
 6 quired under the loan are consolidated and paid in ad-
 7 vance from the loan proceeds provided to the consumer.

8 “(f) CONSIDERATION OF ABILITY TO REPAY; MAN-
 9 DATORY CREDIT COUNSELING.—No creditor may extend
 10 a mortgage referred to in section 103(aa) unless—

11 “(1) at the time at which the loan is con-
 12 summated, the total monthly debts of the obligor, in-
 13 cluding amounts owed under the loan, do not exceed
 14 50 percent of the monthly gross income of the obli-
 15 gor, as verified by the credit application, the finan-
 16 cial statement of the obligor, a credit report, finan-
 17 cial information provided to the creditor by or on be-
 18 half of the obligor, or any other reasonable means;
 19 and

20 “(2) the creditor has first received certification
 21 that the consumer has received counseling on the ad-
 22 visability of the loan transaction from a counselor
 23 approved by the United States Department of Hous-
 24 ing and Urban Development, a State housing financ-
 25 ing agency, or other appropriate regulatory agency.

1 “(g) REQUIREMENTS FOR PAYMENTS UNDER HOME
 2 IMPROVEMENT CONTRACTS.—A creditor shall not make a
 3 payment to a contractor under a home improvement con-
 4 tract from amounts extended as credit under a mortgage
 5 referred to in section 103(aa), other than—

6 “(1) in the form of an instrument that is pay-
 7 able to the consumer or jointly to the consumer and
 8 the contractor; or

9 “(2) at the election of the consumer, by a third
 10 party escrow agent in accordance with terms estab-
 11 lished in a written agreement signed by the con-
 12 sumer, the creditor, and the contractor before the
 13 date of payment.

14 “(h) PROHIBITION ON CALL PROVISIONS.—

15 “(1) IN GENERAL.—A mortgage referred to in
 16 section 103(aa) may not contain terms that permit
 17 the creditor, in the sole discretion of the creditor, to
 18 accelerate repayment of the indebtedness.

19 “(2) CONSTRUCTION.—Paragraph (1) does not
 20 apply when repayment of the loan has been acceler-
 21 ated by default, pursuant to a due-on-sale provision,
 22 or pursuant to some other provision of the loan doc-
 23 uments unrelated to the payment schedule.

24 “(i) PROHIBITION ON MODIFICATION OR DEFERRAL
 25 FEES.—No creditor may charge a consumer any fee or

1 other charge to modify, renew, extend, or amend a mort-
 2 gage referred to in section 103(aa), or to defer any pay-
 3 ment due under the terms of any such mortgage.

4 “(j) PROHIBITION ON MANDATORY ARBITRATION.—
 5 A mortgage referred to in section 103(aa) may not contain
 6 terms that require arbitration of disputes or that limit in
 7 any way the right of the consumer to seek relief through
 8 the judicial process.

9 “(k) PROHIBITION ON FINANCING OF FEES OR
 10 CHARGES.—No creditor may extend a mortgage referred
 11 to in section 103(aa) that directly or indirectly finances—

12 “(1) any prepayment fees or penalties payable
 13 by the consumer in a refinancing transaction, if the
 14 creditor or an affiliate of the creditor is also the
 15 creditor with respect to the obligation being refi-
 16 nanced;

17 “(2) any points or fees; or

18 “(3) any other charges payable to third parties.

19 “(l) PROHIBITION ON BENEFIT FROM REFINANCING
 20 EXISTING LOAN WITH NEW LOAN.—No creditor may
 21 charge a consumer points and fees or other charges in con-
 22 nection with the extension of a mortgage referred to in
 23 section 103(aa) if the proceeds of the loan are used to
 24 refinance an existing mortgage referred to in section
 25 103(aa) that is held by the same creditor.

1 “(m) SECURITIZATION.—Any person that purchases
 2 (in whole or in part) an interest in a mortgage referred
 3 to in section 103(aa) shall exercise due diligence before
 4 such purchase in determining whether the requirements
 5 of this section have been met with respect to the mort-
 6 gage.”.

7 **SEC. 5. ADDITIONAL DEFINITIONS.**

8 Section 103 of the Truth in Lending Act (15 U.S.C.
 9 1602) is amended by adding at the end the following:

10 “(cc) AFFILIATE.—The term ‘affiliate’ has the same
 11 meaning as in section 2(k) of the Bank Holding Company
 12 Act of 1956 (12 U.S.C. 1841(k)).

13 “(dd) BONA FIDE LOAN DISCOUNT POINTS.—The
 14 term ‘bona fide loan discount points’ means loan discount
 15 points knowingly paid by the consumer that results in a
 16 reduction of the interest rate or time-price differential ap-
 17 plicable to the subject loan, if the amount of the interest
 18 rate reduction purchased by the discount points is reason-
 19 able, as determined by the Board.

20 “(ee) POINTS AND FEES.—The term ‘points and
 21 fees’—

22 “(1) means—

23 “(A) finance charges (other than interest
 24 or the time-price differential), as defined by
 25 rule or regulation of the Board;

1 “(B) real estate related fees, as defined by
2 rule or regulation of the Board, but only if the
3 creditor receives direct or indirect compensation
4 in connection with the charge, or the charge is
5 paid to an affiliate of the creditor;

6 “(C) all compensation paid directly or indi-
7 rectly to a mortgage broker, including a broker
8 that originates a loan in its own name in a
9 table funded transaction, that is not otherwise
10 included under subparagraph (A) or (B);

11 “(D) all premiums financed by the cred-
12 itor, directly or indirectly, for any credit life in-
13 surance, credit disability insurance, or credit
14 unemployment insurance, or any other life or
15 health insurance (other than insurance pre-
16 miums calculated and paid on a monthly basis);
17 and

18 “(E) all prepayment fees or penalties in-
19 cluded in the loan documents; and

20 “(2) does not include—

21 “(A) taxes, filing fees, recording and other
22 charges and fees paid or to be paid to public of-
23 ficials for determining the existence of or for
24 perfecting, releasing, or satisfying a security in-
25 terest; or

1 “(B) fees paid to a person other than the
 2 creditor or an affiliate of the creditor, or to the
 3 mortgage broker or an affiliate of the mortgage
 4 broker, with respect to—

5 “(i) flood certification;

6 “(ii) pest infestation determinations;

7 “(iii) appraisals;

8 “(iv) inspections performed prior to
 9 consummation of the transaction;

10 “(v) credit reports;

11 “(vi) surveys;

12 “(vii) attorneys’ fees (if the consumer
 13 has the right to select the attorney from
 14 an approved list or otherwise) or notary
 15 fees;

16 “(viii) escrow charges, if otherwise not
 17 included under subparagraph (A); or

18 “(ix) title and flood insurance pre-
 19 miums, subject to the rules and regulations
 20 of the Board.

21 “(ff) OBLIGOR.—The term ‘obligor’ means each con-
 22 sumer, coconsumer, cosigner, or guarantor obligated to
 23 repay a subject loan or other debt.

24 “(gg) TABLE FUNDED TRANSACTION.—The term
 25 ‘table funded transaction’ means a settlement at which a

1 mortgage loan is funded by an advance of loan funds in
 2 which there is a subsequent assignment of the loan from
 3 the person identified as the creditor in the loan documents
 4 to the person advancing the funds.

5 “(hh) TOTAL LOAN AMOUNT.—The term ‘total loan
 6 amount’ has the meaning given the term by rule or regula-
 7 tion of the Board.”.

8 **SEC. 6. PROHIBITIONS AND LIMITATIONS REGARDING ALL**
 9 **MORTGAGE LOANS.**

10 (a) IN GENERAL.—The Truth in Lending Act (15
 11 U.S.C. 1601 et seq.) is amended by inserting after section
 12 129 the following new section:

13 **“SEC. 129A. REQUIREMENTS AND LIMITATIONS FOR ALL**
 14 **MORTGAGES.**

15 “(a) PROHIBITION ON PREPAYMENT PENALTIES.—
 16 A residential mortgage transaction may not include terms
 17 under which a consumer must pay a prepayment penalty
 18 for paying all or part of the principal before the date on
 19 which the principal is due.

20 “(b) LIMITATIONS WITH RESPECT TO DEFAULT.—

21 “(1) NO ENCOURAGEMENT OF DEFAULT.—A
 22 creditor may not recommend or encourage default on
 23 an existing loan or other debt prior to or in connec-
 24 tion with a residential mortgage transaction that re-

1 finances all or a portion of that existing loan or
2 debt.

3 “(2) NO HIGHER RATE.—

4 “(A) IN GENERAL.—A residential mort-
5 gage transaction may not include terms under
6 which the interest rate mortgage that applies
7 after default is higher than the interest rate
8 that applies before default.

9 “(B) CONSTRUCTION.—Subparagraph (A)
10 does not apply to interest rate changes on a
11 variable rate mortgage loan that result from a
12 change in the annual percentage rate.

13 “(c) PROHIBITION ON FINANCING OF INSURANCE
14 PREMIUMS.—

15 “(1) IN GENERAL.—A residential mortgage
16 transaction may not include terms under which any
17 credit life insurance, credit disability insurance,
18 credit unemployment insurance, or any other life or
19 health insurance premiums are financed, directly or
20 indirectly, under the extension of credit.

21 “(2) CONSTRUCTION.—For purposes of para-
22 graph (1), insurance premiums calculated and paid
23 by the consumer on a monthly basis shall not be
24 considered to be financed by the creditor, but only

1 if the consumer has the option to cancel the insur-
 2 ance coverage (and related premiums) at any time.

3 “(d) LIMITATION ON REFINANCING.—No creditor
 4 may knowingly or intentionally engage in the act or prac-
 5 tice of entering into a residential mortgage transaction
 6 that refinances an existing mortgage unless the new exten-
 7 sion of credit is of tangible net benefit to the consumer,
 8 after consideration of—

9 “(1) the terms of both the new and refinanced
 10 loans;

11 “(2) the cost of the new loan; and

12 “(3) and the ability of the consumer to repay
 13 the new loan.”.

14 (b) CLERICAL AMENDMENT.—Chapter 2 of the Truth
 15 in Lending Act (15 U.S.C. 1631 et seq.) is amended in
 16 the table of contents by inserting after the item relating
 17 to section 129 the following:

“129A. Requirements and limitations for all mortgages.”.

18 **SEC. 7. ENFORCEMENT.**

19 (a) BOARD OF GOVERNORS OF THE FEDERAL RE-
 20 SERVE SYSTEM.—In addition to any other applicable pen-
 21 alties, any person that violates section 129 of the Truth
 22 in Lending Act (15 U.S.C. 1639), as amended by this Act,
 23 shall be subject to the penalties contained in subsections
 24 (a) and (b) of section 8 of the Bank Holding Company
 25 Act of 1956 (12 U.S.C. 1847), and the authority of the

1 Board of Governors of the Federal Reserve System under
2 those subsections.

3 (b) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—

4 (1) IN GENERAL.—A creditor shall be deemed
5 to have engaged in an unfair or deceptive act or
6 practice under the Federal Trade Commission Act
7 (15 U.S.C. 41 et seq.) if it intentionally—

8 (A) structures a mortgage referred to in
9 section 103(aa) of the Truth in Lending Act
10 (15 U.S.C. 1602(aa)) as an open end credit
11 plan;

12 (B) provides misleading information to a
13 consumer or otherwise engages in fraudulent
14 behavior with respect to such a mortgage; or

15 (C) engages in any subterfuge in connec-
16 tion with such a mortgage intended to mis-
17 represent the specific terms or conditions of the
18 credit agreement.

19 (2) ENFORCEMENT.—All enforcement authority
20 of the Federal Trade Commission under the Federal
21 Trade Commission Act (15 U.S.C. 41 et seq.) shall
22 apply with respect to an act or practice described in
23 paragraph (1) in the same manner and to the same
24 extent that such authority otherwise applies to un-
25 fair or deceptive acts or practices under that Act.

1 **SEC. 8. EFFECT ON OTHER LAWS.**

2 The extension of credit in the form of a mortgage
3 referred to in section 103(aa) of the Truth in Lending
4 Act (15 U.S.C. 1602(aa)), as amended by this Act, may
5 not be taken into consideration by the appropriate Federal
6 financial supervisory agency for purposes of assessing the
7 record of a regulated financial institution that is the cred-
8 itor or an affiliate or subsidiary of the creditor in such
9 transaction, in meeting the credit needs of its entire com-
10 munity for purposes of the Community Reinvestment Act
11 of 1977 (12 U.S.C. 2901 et seq.).

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